



American Civil Liberties Union
of Montana

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EXHIBIT 4
DATE 3/4/09
SB 187

March 4, 2009

SB 187

On behalf of the American Civil Liberties Union of Montana and the 2,000 Montana households who are our dues paying members, I respectfully stand today in opposition to SB 187.

A one percent deviation rule would be wholly arbitrary and serve no compelling or even rational state purpose.

A one percent deviation rule, particularly for a state as large and with as dispersed a population as Montana, would make legislative redistricting much more difficult and would lead to the creation of strangely shaped districts that would fragment communities of interest.

The proposed constitutional amendment would be subject to constitutional challenge as purposefully discriminatory since a similar law was enacted by the legislature in 2003 seeking to invalidate a districting plan creating additional majority Indian districts as being based upon "race." See House Bill 309 (2003) (districts must be "within a plus or minus 1% relative deviation from the ideal population of a district"). Both the House and Senate passed resolutions condemning the plan adopted by the 2000 Districting and Reapportionment Commission as having been based predominantly on "race." Montana House Resolution No. 3 (Feb. 4, 2003); Montana Senate Resolution No. 2 (Feb. 4, 2003). The population equality standard of HB 309, however, was invalidated and held to violate the state constitution in *Brown v. Montana Districting and Reapportionment Commission*, No. ADV 2003-72 (July 2, 2003). While Senate Bill No. 187 contains an exception for compliance with the federal Voting Rights Act, the anti-American Indian origin and bias of the bill are apparent and would make it vulnerable to a constitutional challenge.

SB 187 would also be subject to challenge as predominantly motivated by partisan bias. Both the House and Senate Resolutions noted above also charged that the "the 5% population deviation allowance contained in the plan was used for partisan gain," i.e., the creation of additional majority Indian, and thus Democratic, districts.

SB 187 would also be subject to challenge on the ground that it would serve no legitimate state or constitutional purpose, but was designed to restrict the deliberations and decisions of the Districting and Reapportionment Commission in violation of the State Constitution, Article V, Section 14, which gives exclusive jurisdiction to redistrict to the commission.

Scott Crichton
Executive Director

5-1-101. Commission to redistrict and reapportion -- number of legislators. (1) In each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare the plans for redistricting and reapportioning the state into legislative and congressional districts.

(2) The plans for redistricting and reapportionment of legislative districts must be based on the number of members in the house of representatives and the senate to be determined in the legislative session before the census.

5-1-102. Composition of commission. (1) The majority and minority leaders of each house shall each designate one commissioner for the commission provided for in 5-1-101. Two commissioners must be appointed from each district listed in subsection (2). The majority leader in the senate has first choice of the district from which the majority leader will select a commissioner, and the majority leader of the house has second choice. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as the presiding officer of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select the fifth member.

(2) The commission districts are the following counties:

(a) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Beaverhead, Madison, Gallatin, Park, Sweet Grass, Stillwater, and Carbon;

(b) District 2: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith Basin, Cascade, Chouteau, Teton, Pondera, Lewis and Clark, Meagher, Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, and Yellowstone.

5-1-109. Submission of plan for legislative redistricting to legislature. The commission shall submit its legislative redistricting plan to the legislature by the 10th legislative day of the first regular session after its appointment or after the census figures are available.

5-1-110. Recommendations of legislature. Within 30 days after the commission submits its legislative redistricting plan to the legislature, the legislature shall return the plan to the commission with its recommendations.

5-1-111. Final plan -- dissolution of commission. (1) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(2) Within 30 days after receiving the legislative redistricting plan and the legislature's recommendations, the commission shall file its final legislative redistricting plan with the secretary of state and it shall become law.

(3) Upon filing both plans, the commission shall be dissolved.